

AMENDED IN SENATE APRIL 18, 2012

AMENDED IN SENATE APRIL 10, 2012

SENATE BILL

No. 1000

Introduced by Senator Yee
(Principal coauthor: Senator Alquist)
(Principal coauthor: Assembly Member Hill)
(Coauthor: Senator Blakeslee)

February 6, 2012

An act to amend Sections 315, ~~454.5~~, and 583 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1000, as amended, Yee. Public Utilities Commission: records.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. The Public Utilities Act requires the commission to investigate the cause of all accidents occurring upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and authorizes the commission to make any order or recommendation with respect to the investigation that it determines to be just and reasonable.

This bill would require that any order or recommendation made by the commission and any accident report filed with, or generated by, the commission pursuant to these requirements be made available and ready for public review in compliance with the California Public Records Act and these provisions.

~~(2) The Public Utilities Act requires the commission to adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, as specified.~~

~~This bill instead would require the commission to adopt appropriate procedures to ensure the confidentiality of any market sensitive information that can be shown to bring upward pressure on prices submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, as specified.~~

~~(3)~~

(2) The Public Utilities Act prohibits the commission or an officer or employee of the commission from disclosing any information furnished to the commission by a public utility, a subsidiary, an affiliate, or corporation holding a controlling interest in a public utility, unless the information is specifically required to be open to public inspection under the act, except on order of the commission or a commissioner in the course of a hearing or proceeding. The act provides that any present or former officer or employee of the commission who divulges this information is guilty of a misdemeanor.

~~This bill would instead require the commission to disclose specified public records. The bill would require the commission, prior to disclosing any record, to determine whether any exemptions to the California Public Records Act or other law restricting disclosure apply to that record. The bill would require the commission to create a list of safety-related reports that the commission would, upon completion of the reports, automatically disclose to the public. The bill would require the commission to post certain information on its Internet Web site. The bill would require the commission to immediately revise its written guidelines, resolutions, and general orders, as specified, and modify its existing rules and regulations governing disclosure of public records to provide guidance on the showing necessary to justify a commission decision to withhold disclosure of specified categories of public records. The bill would repeal the provision that any present or former officer or employee who divulges nonpublic information is guilty of a misdemeanor.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 315 of the Public Utilities Code is
2 amended to read:

3 315. (a) The commission shall investigate the cause of all
4 accidents occurring within this state upon the property of any
5 public utility or directly or indirectly arising from or connected
6 with its maintenance or operation, resulting in loss of life or injury
7 to person or property and requiring, in the judgment of the
8 commission, investigation by it, and may make any order or
9 recommendation with respect thereto as in its judgment seems just
10 and reasonable. Every public utility shall file with the commission,
11 under rules the commission prescribes, a report of each accident
12 so occurring of the kinds or classes as the commission from time
13 to time designates.

14 (b) Any order or recommendation made by the commission
15 pursuant to this section, and any accident report filed with, or
16 generated by, the commission pursuant to this section, shall be
17 made available and ready for public review in compliance with
18 the California Public Records Act (Chapter 3.5 (commencing with
19 Section 6250) of Division 7 of Title 1 of the Government Code)
20 and Section 583. Neither the order or recommendation of the
21 commission nor any accident report filed with the commission
22 shall be admitted as evidence in any action for damages based on
23 or arising out of the loss of life or injury to person or property.

24 ~~SEC. 2. Section 454.5 of the Public Utilities Code is amended~~
25 ~~to read:~~

26 ~~454.5. (a) The commission shall specify the allocation of~~
27 ~~electricity, including quantity, characteristics, and duration of~~
28 ~~electricity delivery, that the Department of Water Resources shall~~
29 ~~provide under its power purchase agreements to the customers of~~
30 ~~each electrical corporation, which shall be reflected in the electrical~~
31 ~~corporation's proposed procurement plan. Each electrical~~
32 ~~corporation shall file a proposed procurement plan with the~~
33 ~~commission not later than 60 days after the commission specifies~~
34 ~~the allocation of electricity. The proposed procurement plan shall~~
35 ~~specify the date that the electrical corporation intends to resume~~
36 ~~procurement of electricity for its retail customers, consistent with~~
37 ~~its obligation to serve. After the commission's adoption of a~~
38 ~~procurement plan, the commission shall allow not less than 60~~

1 ~~days before the electrical corporation resumes procurement~~
2 ~~pursuant to this section.~~

3 ~~(b) An electrical corporation's proposed procurement plan shall~~
4 ~~include, but not be limited to, all of the following:~~

5 ~~(1) An assessment of the price risk associated with the electrical~~
6 ~~corporation's portfolio, including any utility-retained generation,~~
7 ~~existing power purchase and exchange contracts, and proposed~~
8 ~~contracts or purchases under which an electrical corporation will~~
9 ~~procure electricity, electricity demand reductions, and~~
10 ~~electricity-related products and the remaining open position to be~~
11 ~~served by spot market transactions.~~

12 ~~(2) A definition of each electricity product, electricity-related~~
13 ~~product, and procurement-related financial product, including~~
14 ~~support and justification for the product type and amount to be~~
15 ~~procured under the plan.~~

16 ~~(3) The duration of the plan.~~

17 ~~(4) The duration, timing, and range of quantities of each product~~
18 ~~to be procured.~~

19 ~~(5) A competitive procurement process under which the~~
20 ~~electrical corporation may request bids for procurement-related~~
21 ~~services, including the format and criteria of that procurement~~
22 ~~process.~~

23 ~~(6) An incentive mechanism, if any incentive mechanism is~~
24 ~~proposed, including the type of transactions to be covered by that~~
25 ~~mechanism, their respective procurement benchmarks, and other~~
26 ~~parameters needed to determine the sharing of risks and benefits.~~

27 ~~(7) The upfront standards and criteria by which the acceptability~~
28 ~~and eligibility for rate recovery of a proposed procurement~~
29 ~~transaction will be known by the electrical corporation prior to~~
30 ~~execution of the transaction. This shall include an expedited~~
31 ~~approval process for the commission's review of proposed contracts~~
32 ~~and subsequent approval or rejection thereof. The electrical~~
33 ~~corporation shall propose alternative procurement choices in the~~
34 ~~event a contract is rejected.~~

35 ~~(8) Procedures for updating the procurement plan.~~

36 ~~(9) A showing that the procurement plan will achieve the~~
37 ~~following:~~

38 ~~(A) The electrical corporation, in order to fulfill its unmet~~
39 ~~resource needs, shall procure resources from eligible renewable~~
40 ~~energy resources in an amount sufficient to meet its procurement~~

1 requirements pursuant to the California Renewables Portfolio
2 Standard Program (Article 16 (commencing with Section 399.11)
3 of Chapter 2.3).

4 (B) The electrical corporation shall create or maintain a
5 diversified procurement portfolio consisting of both short-term
6 and long-term electricity and electricity-related and demand
7 reduction products.

8 (C) The electrical corporation shall first meet its unmet resource
9 needs through all available energy efficiency and demand reduction
10 resources that are cost effective, reliable, and feasible.

11 (10) The electrical corporation's risk management policy,
12 strategy, and practices, including specific measures of price
13 stability.

14 (11) A plan to achieve appropriate increases in diversity of
15 ownership and diversity of fuel supply of nonutility electrical
16 generation.

17 (12) A mechanism for recovery of reasonable administrative
18 costs related to procurement in the generation component of rates.

19 (e) The commission shall review and accept, modify, or reject
20 each electrical corporation's procurement plan. The commission's
21 review shall consider each electrical corporation's individual
22 procurement situation, and shall give strong consideration to that
23 situation in determining which one or more of the features set forth
24 in this subdivision shall apply to that electrical corporation. A
25 procurement plan approved by the commission shall contain one
26 or more of the following features, provided that the commission
27 may not approve a feature or mechanism for an electrical
28 corporation if it finds that the feature or mechanism would impair
29 the restoration of an electrical corporation's creditworthiness or
30 would lead to a deterioration of an electrical corporation's
31 creditworthiness.

32 (1) A competitive procurement process under which the
33 electrical corporation may request bids for procurement-related
34 services. The commission shall specify the format of that
35 procurement process, as well as criteria to ensure that the auction
36 process is open and adequately subscribed. Any purchases made
37 in compliance with the commission-authorized process shall be
38 recovered in the generation component of rates.

39 (2) An incentive mechanism that establishes a procurement
40 benchmark or benchmarks and authorizes the electrical corporation

1 to procure from the market, subject to comparing the electrical
2 corporation's performance to the commission-authorized
3 benchmark or benchmarks. The incentive mechanism shall be
4 clear, achievable, and contain quantifiable objectives and standards.
5 The incentive mechanism shall contain balanced risk and reward
6 incentives that limit the risk and reward of an electrical corporation.

7 (3) Upfront achievable standards and criteria by which the
8 acceptability and eligibility for rate recovery of a proposed
9 procurement transaction will be known by the electrical corporation
10 prior to the execution of the bilateral contract for the transaction.
11 The commission shall provide for expedited review and either
12 approve or reject the individual contracts submitted by the electrical
13 corporation to ensure compliance with its procurement plan. To
14 the extent the commission rejects a proposed contract pursuant to
15 this criteria, the commission shall designate alternative procurement
16 choices obtained in the procurement plan that will be recoverable
17 for ratemaking purposes.

18 (d) A procurement plan approved by the commission shall
19 accomplish each of the following objectives:

20 (1) Enable the electrical corporation to fulfill its obligation to
21 serve its customers at just and reasonable rates.

22 (2) Eliminate the need for after-the-fact reasonableness reviews
23 of an electrical corporation's actions in compliance with an
24 approved procurement plan, including resulting electricity
25 procurement contracts, practices, and related expenses. However,
26 the commission may establish a regulatory process to verify and
27 ensure that each contract was administered in accordance with the
28 terms of the contract, and contract disputes that may arise are
29 reasonably resolved.

30 (3) Ensure timely recovery of prospective procurement costs
31 incurred pursuant to an approved procurement plan. The
32 commission shall establish rates based on forecasts of procurement
33 costs adopted by the commission, actual procurement costs
34 incurred, or combination thereof, as determined by the commission.
35 The commission shall establish power procurement balancing
36 accounts to track the differences between recorded revenues and
37 costs incurred pursuant to an approved procurement plan. The
38 commission shall review the power procurement balancing
39 accounts, not less than semiannually, and shall adjust rates or order
40 refunds, as necessary, to promptly amortize a balancing account,

1 according to a schedule determined by the commission. Until
2 January 1, 2006, the commission shall ensure that any
3 overcollection or undercollection in the power procurement
4 balancing account does not exceed 5 percent of the electrical
5 corporation's actual recorded generation revenues for the prior
6 calendar year excluding revenues collected for the Department of
7 Water Resources. The commission shall determine the schedule
8 for amortizing the overcollection or undercollection in the
9 balancing account to ensure that the 5 percent threshold is not
10 exceeded. After January 1, 2006, this adjustment shall occur when
11 deemed appropriate by the commission consistent with the
12 objectives of this section.

13 (4) ~~Moderate the price risk associated with serving its retail~~
14 ~~customers, including the price risk embedded in its long-term~~
15 ~~supply contracts, by authorizing an electrical corporation to enter~~
16 ~~into financial and other electricity-related product contracts.~~

17 (5) ~~Provide for just and reasonable rates, with an appropriate~~
18 ~~balancing of price stability and price level in the electrical~~
19 ~~corporation's procurement plan.~~

20 (e) ~~The commission shall provide for the periodic review and~~
21 ~~prospective modification of an electrical corporation's procurement~~
22 ~~plan.~~

23 (f) ~~The commission may engage an independent consultant or~~
24 ~~advisory service to evaluate risk management and strategy. The~~
25 ~~reasonable costs of any consultant or advisory service is a~~
26 ~~reimbursable expense and eligible for funding pursuant to Section~~
27 ~~631.~~

28 (g) ~~The commission shall adopt appropriate procedures to ensure~~
29 ~~the confidentiality of any market sensitive information that can be~~
30 ~~shown to bring upward pressure on prices submitted in an electrical~~
31 ~~corporation's proposed procurement plan or resulting from or~~
32 ~~related to its approved procurement plan, including, but not limited~~
33 ~~to, proposed or executed power purchase agreements, data request~~
34 ~~responses, or consultant reports, or any combination, provided that~~
35 ~~the Office of Ratepayer Advocates and other consumer groups that~~
36 ~~are nonmarket participants shall be provided access to this~~
37 ~~information under confidentiality procedures authorized by the~~
38 ~~commission.~~

39 (h) ~~Nothing in this section alters, modifies, or amends the~~
40 ~~commission's oversight of affiliate transactions under its rules and~~

1 decisions or the commission's existing authority to investigate and
2 penalize an electrical corporation's alleged fraudulent activities;
3 or to disallow costs incurred as a result of gross incompetence;
4 fraud, abuse, or similar grounds. Nothing in this section expands,
5 modifies, or limits the State Energy Resources Conservation and
6 Development Commission's existing authority and responsibilities
7 as set forth in Sections 25216, 25216.5, and 25323 of the Public
8 Resources Code.

9 (i) An electrical corporation that serves less than 500,000 electric
10 retail customers within the state may file with the commission a
11 request for exemption from this section, which the commission
12 shall grant upon a showing of good cause.

13 (j) (1) Prior to its approval pursuant to Section 851 of any
14 divestiture of generation assets owned by an electrical corporation
15 on or after the date of enactment of the act adding this section, the
16 commission shall determine the impact of the proposed divestiture
17 on the electrical corporation's procurement rates and shall approve
18 a divestiture only to the extent it finds, taking into account the
19 effect of the divestiture on procurement rates, that the divestiture
20 is in the public interest and will result in net ratepayer benefits.

21 (2) Any electrical corporation's procurement necessitated as a
22 result of the divestiture of generation assets on or after the effective
23 date of the act adding this subdivision shall be subject to the
24 mechanisms and procedures set forth in this section only if its
25 actual cost is less than the recent historical cost of the divested
26 generation assets.

27 (3) Notwithstanding paragraph (2), the commission may deem
28 proposed procurement eligible to use the procedures in this section
29 upon its approval of asset divestiture pursuant to Section 851.

30 ~~SEC. 3.~~

31 *SEC. 2.* Section 583 of the Public Utilities Code is amended
32 to read:

33 583. (a) No information furnished to the commission by a
34 public utility, or any business that is a subsidiary or affiliate of a
35 public utility, or a corporation that holds a controlling interest in
36 a public utility, except those matters specifically required to be
37 open to public inspection by this part, shall be open to public
38 inspection or made public except on order of the commission, or
39 by the commission or a commissioner in the course of a hearing
40 or proceeding.

1 ~~(b) Subdivision (a) shall not apply to any of the following public~~
2 ~~records:~~

3 ~~(1) Records of completed and routine safety-related~~
4 ~~investigations, inspections, and audits made by the commission.~~
5 ~~These records shall include all communications included in~~
6 ~~completed and routine safety-related investigations, inspections,~~
7 ~~and audits.~~

8 ~~(2) Reports of gas incidents required by federal regulations and~~
9 ~~commission rules.~~

10 ~~(3) Quarterly summary reports summarizing all commission~~
11 ~~reportable and nonreportable gas-leak-related incidents submitted~~
12 ~~to the commission.~~

13 ~~(4) Annual safety reports required pursuant to federal regulations~~
14 ~~and the commission.~~

15 ~~(5) Pipeline strength testing failure reports required pursuant to~~
16 ~~federal regulations and the commission.~~

17 ~~(6) Change in Maximum Allowable Operating Pressure reports~~
18 ~~required by General Order 112-E.~~

19 ~~(7) Mobilehome park annual reports, inspection reports, and~~
20 ~~citation records related to the commission's enforcement of federal~~
21 ~~pipeline safety standards for mobilehome park operators.~~

22 ~~(8) Propane operator annual reports, inspection reports, and~~
23 ~~citation records related to the commission's enforcement of federal~~
24 ~~pipeline safety standards for propane operators.~~

25 ~~(9) Applications submitted to the commission by railroads~~
26 ~~proposing changes to rail crossings.~~

27 ~~(e) Notwithstanding subdivision (a), the commission may~~
28 ~~disclose a record when on the facts of a particular case the public~~
29 ~~interest served by disclosing the record clearly outweighs the public~~
30 ~~interest served by nondisclosure of the record.~~

31 ~~(d)~~

32 ~~(b) Prior to disclosing any record, the commission shall~~
33 ~~determine whether any exemption to the California Public Records~~
34 ~~Act (Chapter 3.5 (commencing with Section 6250) of Division 7~~
35 ~~of Title 1 of the Government Code) or other law restricting~~
36 ~~disclosure applies to that record.~~

37 ~~(e)~~

38 ~~(c) The commission shall create a list of safety-related reports~~
39 ~~that the commission will, upon completion of the reports,~~
40 ~~automatically disclose to the public.~~

1 ~~(f)~~

2 ~~(d)~~ On the commission's Internet Web site, the commission
3 shall do all of the following:

4 (1) Create and maintain a comprehensive index of the
5 commission's records that explains whether and how the public
6 can access the commission's records.

7 (2) Create and maintain a database that details the requests the
8 commission has received to treat documents as confidential and
9 the commission's decisions regarding these requests.

10 (3) Routinely post the safety-related reports that the commission
11 determines are subject to disclosure.

12 (4) Provide a description of the commission's safety jurisdiction,
13 inspection, investigation, and enforcement activities.

14 ~~(g)~~

15 ~~(e)~~ To ensure compliance with the California Public Records
16 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
17 of Title 1 of the Government Code), the commission shall, as
18 appropriate, redact a publicly released document.

19 ~~(h)~~

20 ~~(f)~~ The commission shall immediately revise its written
21 guidelines, *resolutions*, and *general orders* adopted pursuant to
22 Section 6253.4 of the Government Code and shall modify its
23 existing rules and regulations governing the disclosure of public
24 records to provide guidance on the showing necessary to justify a
25 commission decision to withhold disclosure of the categories of
26 public records defined in the California Public Records Act
27 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
28 Title 1 of the Government Code).